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**PDF PAGE 1, COLUMNS 3,  
4, & 7**

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**PDF PAGE 1, COLUMN 2  
FRANK CASE TO CONTINUE  
MONDAY**

**PDF PAGE 1, COLUMN 3**

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*New Frank Trial Could  
Not Be Held in  
Fulton*

*Nor With Roan or  
Dorsey*

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When New Trial Is  
Granted on

# Grounds of Prejudice, a Change of Venue as to Judge, Jury and Prosecuting Attorney Is Necessary

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If a new trial is granted to Leo M. Frank upon the grounds of prejudice which the defense alleges in its motion along with numerous other grounds, that will mean:

First, Leo M. Frank will be tried in another county and another judicial circuit; and

Second, a new judge and a new solicitor will replace Judge Roan and Solicitor Dorsey. Attorneys Arnold and Rosser and Haas alone of the company of principals in the recent Atlanta trial will appear in it again.

This interpretation of the station's possibilities was made Saturday morning by a lawyer of experience and conservative opinion. He said that new trials granted upon grounds of prejudice carry with them necessarily a change of venue, not only as to jury

and jury, but also as to prosecuting officer representing the state's side of the case.

A strong effort is being made by the defense lawyers in the new trial motion hearing before Judge Roan to back up its charges of prejudice at the trial of Frank for the murder of Mary Phagan; and it is being combatted with equal determination by the state's counsel.

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## **PDF PAGE 1, COLUMN 4**

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# **FISHER TO BE TAKEN**

# **TO DALTON ON SUNDAY**

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## **Man Who Made Charges in**

## **Phagan Case Must Answer**

# Murder Change in Whitfield

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DALTON, Ga., Oct. 25.—No clash between officials will result when Deputy Sheriff Thompson leaves Sunday for Atlanta to secure Ira Fisher, indicted here for the murder of Dug Steele. Sheriff Glenn has received assurances from officials in Atlanta that Fisher will be turned over to this county at once, as the charges against him in Atlanta can wait until after the murder case is disposed of.

Eubanks & Mebane, a law firm of Rome, have been retained to defend Fisher. They were here yesterday looking into the matter. The case is set for hearing at the regular January term of Whitfield superior court.

While the case against Fisher is based on circumstantial evidence, enough has been secured to make the evidence of an extremely damaging nature, it is said.

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**PDF PAGE 1, COLUMN 6**

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**ARNOLD SEVERE  
IN**

# **ATTACK ON DORSEY AND STATE'S CASE**

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**“DEFENSE, NOT THE  
STATE, IS FOR  
LAW AND ORDER”**

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Attorney Arnold  
Continues

Saturday Afternoon –  
Attor-

# ney Rosser to Follow —Solic- itor's Argument to End Case

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With indication that it could not be concluded Saturday, the hearing before Judge L. S. Roan of the motion for a new trial for Leo M. Frank was resumed at 2 o'clock Saturday afternoon with Reuben R. Arnold, of counsel for the convicted man, again on the floor. Mr. Arnold began his speech Friday afternoon, and continued it throughout the morning session, Saturday. It was expected that after him Luther Z. Rosser, also of counsel for the defense, would speak, and that Solicitor Dorsey would conclude the case with his argument. It probably will be Monday before the solicitor even begins.

Mr. Arnold's speech Saturday morning was characterized by repeated and plain spoken attacks upon the solicitor's methods before and during the trial, upon his manner toward the case, upon his argument, upon his reference to this and that point, and upon his use of alleged facts not borne out by the evidence. He referred to parts of Mr. Dorsey's arguments as "childish," and to others as "cheap claptrap" and "demagoguery." He disputed the weight of evidence on various points, declaring it to be unworthy of belief. He accused the prosecution of distorting facts and of discarding its own witnesses and discrediting their testimony upon details which confused its theory. He insisted that a refusal of a new trial by Judge Roan would be tantamount to approval by the judge of the evidence itself, and cited a supreme court

decision which appeared to put the responsibility upon the judge of weighing the evidence under certain circumstances.

Three affidavits which might have affected the new trial hearing quite considerably cannot be considered at that hearing because they will arrive in Atlanta. too late. They are from citizens who are said to swear that Juror Henslee talked with them before the trial of Frank and expressed to them not a conviction of Frank's guilt, but of his innocence.

Solicitor Dorsey is said to have received a telegram Saturday morning, informing him that these affidavits had been signed and were on their way to Atlanta. Inasmuch as the hearing was closed finally on Friday afternoon, so far as the reception. of new matter is concerned, these new depositions will be of no avail to the state.

Mr. Arnold resumed his argument by reading several decisions of the supreme court relative to the duty of the trial judge passing on a motion for a new trial, to look into the evidence itself. One of the decisions which he read was that in the Harden case:

"This court (the supreme court), in the absence of error, will not set aside the verdict, even if the preponderance of evidence is against it, if it has been before the trial judge. While it is entirely a matter of judicial discretion, the trial judge has direct supervision of the verdict. The exercise of this power by the trial judge is necessary in the interests of justice, although he should not capriciously set aside a verdict. If there is a reasonable doubt the trial judge should decide in favor of the application, because this court has to consider the verdict as approved by the trial judge as well as made by the jury."

Mr. Arnold declared:

"In every case where you refuse a new trial, you must put the stamp of your own approval upon the verdict."

"If this is such a strong case, why can't it stand another trial?"

"If it is a case of genuine guilt, not a frame-up; if it is founded upon truth, not perjury; if it is as strong a case as Mr. Dorsey claims it is, it certainly will stand trial under other circumstances and in another place where there is a chance for a fair and impartial hearing."

This reference by Mr. Arnold was interpreted as significant of the defense's fight to get a trial somewhere else by another court.

Mr. Arnold read another decision which stated in effect that where there is a conflict in the evidence, as in this case, and yet there is some evidence, however slight, to justify the verdict, the supreme court can not reverse the verdict.

Judge Roan interrupted. "I recognize that doctrine. It is all through the book," said he.

Mr. Arnold read another decision, in effect that new trials should be granted more frequently in criminal cases than in civil cases, and that they should be granted still more frequently criminal cases if the penalty is severe.

### JUDGMENT OVERSHADOWED.

"Much has been said about law and order," said Mr. Arnold. "In that proposition the fact has been overlooked that a crime can be committed against a man charged with a crime. It was

**(Continued on Page 2, Col. 1.)**

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**PDF PAGE 2, COLUMN 1**

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**ARNOLD SEVERE IN**



# ATTACK ON DORSEY AND STATE'S CASE

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(Continued From Page 1.)

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not the law and order spirit which was manifested at the Frank trial. It was not manifested there by the crowd nor by the character of the witnesses. People often allow a crime with which a man is charged, to overshadow their judgment, and this has been the case here.

"If this case had been tried in a part of the country where it had never been heard of before, and where there had been no malicious lies whispered around, and where the minds of the jurors were blank with reference to this case, a verdict of not guilty would have been brought in without a moment's delay. That is the way a criminal trial should be approached."

"This case ought never to have been tried at the time it was, nor under such inadequate physical surroundings. I say this from firm conviction but without any criticism."

PIPE DREAM.

Mr. Arnold took up a discussion of the evidence. He characterized as a pipe dream, incredible and unworthy of belief, the allegation by the state that Frank made arrangements with Conley on Friday before the murder to watch for him. He placed the same estimate on Helen Ferguson's evidence that she tried to get Mary Phagan's pay.

He took up the affidavits of Jim Conley, declaring that in themselves they prove that Jim Conley could make up a marvelous lie. He called attention to Conley's evidence that Monteen Stover entered the factory after Mary Phagan and after he had heard Mary Phagan scream. "This gives the lie to Conley's testimony," said he. "This was a wonderful watchman, to let that little Stover girl go up there after he had heard the scream and when he knew that something wrong had happened."

### RAN CLOCKS BACK; SCHEDULES UP

"At first the story of this man Conley was the most ridiculous lie ever invented, and it only became reasonable under the direction of the detectives. Dreadful things were resorted to by the state in this case, to get away from plain, physical facts. They ran clocks back and they ran up the schedule of street cars. The car on which she rode had to reach the city seven minutes ahead of schedule, and the clock at the factory had to be four minutes behind time if their theory is to hold. Did you ever hear of such temerity as the discarding of physical facts? They brought in Kendley and this man McCoy, whose watch was in soak, to swear against the statements of the motorman and conductor of the car that Mary Phagan came in on."

### EPPS' TESTIMONY.

"So many liberties did the state take that they would not be bound even by their own witnesses. First they say a thing, and then they swear it is not true. Epps smashed their case when he put the arrival of the car at 12:07 1-2. And then they tried to get around his testimony—their own witness—by the statements of those volunteers that the prejudiced mind of some of the people brought forth. Anything that the state wished to be done was done. Never before had such brazen effrontery been exhibited in a court room. The state realized that time was vital, and they fixed it by Epps. His words are hardly cold before they try to get away from them. They don't bring a single person to swear that the car on that day was behind schedule. But they bring several

who say that it might have been behind. Are we going to convict a man on what might have been?

### CAR'S TIME.

"The state's whole case will fall as a monstrous fabrication if she got off the ear at 12:07 1-2."

"Why?" asked Judge Roan.

"Because Monteen Stover got to the factory at 12:05 o'clock. She looked at the clock particularly. She waited until 12:10. The state's own witness, the states' only witness, Jim Conley, swears that Mary Phagan came in before Monteen Stover, and he heard Mary scream before Monteen came in."

### "WILD PREJUDICE."

"Can they play fast and loose, your honor? It looks like they can do almost anything to convict a man when they are backed up by such wild prejudice."

Mr. Arnold attacked Solicitor Dorsey's argument to the jury, calling it "the cheapest claptrap and the veriest demagoguery" that he ever had heard.

The court asked Mr. Arnold about the evidence relative to Frank's knowledge that Conley could write. Mr. Arnold replied that while Frank knew Conley could write, there was no evidence to show he had been told that Conley denied it to the detectives.

### NOTES TAKEN UP.

Taking up the notes found beside Mary Phagan's body, Mr. Arnold declared that in them the murderer showed unconsciously how he had disposed of the body when he attempted to make it appear that Mary said "he pushed me down the hole." As evidence that the notes were written by a negro, he declared, it took Newt Lee, another negro, to interpret the words "night watch" as meaning night watchman.

Mr. Arnold scored the statement of Conley at the trial that he had not told the whole truth when he admitted writing the notes, for the reason that he was trying to protect Frank. He said Conley already had declared Frank dictated the notes to him, and that he was lying thereafter not to protect Frank, but to save his own neck.

### ATTACKS DORSEY'S SPEECH.

Reverting to the solicitor's speech, he characterized Mr. Dorsey's attack on the defense's time alibi as "childish." He declared that the solicitor's methods during the trial were unfair and unjust, and would have been repudiated but for the insane prejudice prevailing against the defendant. "We should fight with civilized methods when we are trying a man for his life," declared Mr. Arnold. "There are murders committed outside the court room, and many murders are committed in it. I had rather be a party to one committed outside than to one committed inside the court."

Turning directly to Judge Roan, and speaking with vehemence, Mr. Arnold said:

### "JUDICIAL MURDER."

"Have you had a hand in a judicial murder? That is the question that you will always ask your conscience." Turning to the solicitor: "Don't talk to me and say that it was done lawfully. Don't say 'I had a right to distort facts in urging a conviction.'"

### OUTSIDE THE RECORD.

Mr. Arnold returned to the solicitor's speech to the jury and made lengthy comment upon it. He said that the solicitor went outside the record for much of his argument. He read on this point an extract from a decision by Justice J. H. Lumpkin, of the state supreme court.

"We cannot help but express our regret, as we have expressed it before, that counsel for the state should permit their

zeal to betray them into comment upon facts not proven before the jury. They owe it to themselves as honorable men to abstain from this too common practice. This practice might justify a stern rebuke, even the setting aside of the judgment procured. But we trust this reprobation of the practice will suffice to cure the evil."

Mr. Arnold commented also on the Minola McKnight incidents of the investigation.

"Russia is not much worse than this," said he. "The detectives used most illegal and criminal methods in this case. I don't know what this country is coming to, but I know we need more respect for personal liberty."

He read an extract from the solicitor's speech in which Mr. Dorsey praised the city detectives for their work in the Frank case.

"It is a terrible thing, your honor, for any prosecuting officer to admit brazenly that he approves of these criminal methods. Those detectives committed a crime against that negro woman that would have justified her in attempting to kill them."

"The solicitor went out of the record in referring to the slush fund, which never existed. Our case has suffered from the reputation of having a fund behind it. Personally, Mr. Rosser and I have suffered because we did not have one. There never was a cleaner defense than ours has been. In fact, the defense in this case, not the prosecution, represents the real law and order element. It is getting so that the man of respectability can't have a fair trial. A lousy tramp stands a better chance at justice. Frank was not given a fair chance because the detectives and the solicitor trembled at the thought that the people would say they had favored Frank, that they had treated him with too much consideration because of his respectability. And Mr. Dorsey said in his speech that the only thing he had to say against the detectives was that they had treated Frank with too much consideration."

Mr. Arnold commented upon the solicitor's use of Frank's letter to his uncle in his, the solicitor's argument. He declared that the solicitor's allusions to the letter were far-fetched and impossible, and so unjust that under ordinary circumstances he would have been frowned upon by the jury.

"Your honor, we never had a judicial trial," said Mr. Arnold. "The temper of the people in this case was such that Mr. Dorsey had only to look at that gang of wolves out there in the audience and they would beam upon him in bloody satisfaction."

### NOT EVEN A DOG'S SHOW.

"I never heard of another case where so many outside things were drawn in to damn a man. I hate to say it, but Frank didn't have a dog's show at that trial. Mr. Dorsey was talking for effect upon that bunch of spinach in the audience."

Mr. Arnold scored the solicitor for singling out Frank's reference to the "thin gray line of veterans" in his letter to his uncle. He characterized that as an appeal to the grand stand. He discussed the methods used by the state in gathering evidence, declaring that the attitude of the prosecution was an open invitation to anyone who hated respectability to come up and make a spectacle of himself and that the law would stand behind him.

"The dreadful lies sworn in the ritual murder case in Russia have shocked Europe," said he. "They show what you will have when the law stands behind perjury. The prosecution in this case called out to the multitude, 'We are about to pull a man down from a high pinnacle on which he has been standing. Come to our aid. You are safe, no matter what you swear.' When you strip this case of all its paint and varnish, it is hideous."

Mr. Arnold had not concluded when court recessed for lunch at 12:45 o'clock, to meet again at 2.

# **BANKRUPT NOVELTY MAN ARRESTED BY CERDITORS**

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N. I. Habitt, of Atlanta,  
Ar-

rested in Danville,  
Va., by

Officers

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N. I. Habbitt, manager of the Novelty Importing company, of 61 West Mitchell street, which went into bankruptcy last Monday, was brought back to Atlanta Saturday morning from Danville, Va., by W. T. Morris, secretary to Police Chief Beavers.

Habitt was arrested on warrants sworn out by the McClure Ten Cent company and the Blue Seal Ice Cream company, which charge him with cheating and swindling.

After the failure of his company, whose liabilities were scheduled at about \$5,000. Habit is said to have sold out some stocks and disappeared. His creditors became alarmed and took out warrants for him. The police located him at Danville.

When arrested Habitt had but \$89. It was expected that he would have about \$3,000. He returned to Atlanta without a requisition. It was learned that he had shipped his trunk to New York.

Harry Dodd, receiver for the defunct Novelty Importing company, sold its assets Saturday morning at public auction.

Habitt is said to have been arrested some time ago on a charge of selling obscene pictures.

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